86-880

No. _____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

JOHN C. HUMPHREY
W.C. GARBEZ
ROBERT D. SMITH

Petitioners

vs.

UNITED STATES OF AMERICA,

Respondent

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

DID THE COAST GUARD'S RANDOM STOP OF THE SAILBOAT "ORCA" 2000 MILES FROM THE BORDER AND SEARCH OF BELOW DECK PRIVATE CABIN AND BATHROOM, VIOLATE THE FOURTH AMENDMENT ABSENT PROBABLE CAUSE, OR REASONABLE GROUNDS, OR AN ADMINISTRATIVE WARRANT? SINCE THIS QUESTION WAS LEFT UNANSWERED IN U.S. v. VILLAMONTE-MARQUEZ, 462 U.S. 579 (1983) AND IS NOW A MAJOR CONFLICT IN THE CIRCUITS, SHOULD THIS COURT GRANT REVIEW TO INSURE UNIFORMITY?

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STATUTORY & CONSTITUTIONAL PROVISIONS RELIED UPON

Fourth Amendment, United States Constitution:

Searches and Seizures. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

21 USC 955(a) states in part:

...It is unlawful for any person on board a vessel of the United States or on board a vessel subject to the jurisdiction of the United States on the high seas to knowingly or intentionally manufacture or distribute or possess with intent to manufacture or distribute a controlled substance.

14 USC 89(a) states in part:

(a) The Coast Guard may make inquiries, examinations, inspections, searches, seizures, and arrests upon the high seas in waters over which the United States has jurisdiction, for the prevention, detection, and suppression of violations of law of the United States. For such purposes, commissions, warrant, and petty officers may at any time go on board of any vessel subject to the jurisdiction or to the operation of any law of the United States, address inquiries to those on board, examine the ship's documents and papers, and examine, inspect, and search the vessel, and use all necessary force to compel compliance ...

I. INTRODUCTION

Petitioners request review of the 9th Circuit in U.S. v. Humphrey, 759 F.2d 743 (9th Cir. 1985), rehearing denied 09/26/86.

II. OPINION BELOW

U.S. v. Humphrey, supra, and denial of rehearing appear in full in Appendix I.

III. JURISDICTION

The 9th Circuit opinion (05/02/86) follows a marijuana conviction under 21 USC 955(a). Rehearing was denied on 09/26/86. This petition was filed within 60 days. Jurisdiction is pursuant to 28 USC 1254(1).

IV. STATEMENT OF THE CASE

THE RANDOM STOP OF THE ORCA

In June 1982, the Coast Guard cutter BOUTWELL was in international water 2000 miles west of the U.S. Coast, investigating fishing. It sighted the "ORCA", a 39 foot

U.S. sailboat riding comfortably. [MH 18-22][1]

Commander Krumm boarded the ORCA for several reasons. He thought the ORCA might be carrying drugs since maybe from the Orient. He had received a message to look for named boats suspected of drugs. The ORCA was NOT a named suspect. [MH 26,89] The ORCA was riding "slightly low" but Commander Krumm knew that legal cargo would make a boat ride low since on long sails sailboats carry large supplies of water, fuel, food, and equipment. [MH 23,58]

While the ORCA's location was not common, Commander Krumm knew the ORCA was built to sail the ocean and was on the most efficient course to the U.S. or Canada.

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[1] References are to transcript of the evidentiary hearing before the Magistrate ["MH"] or trial in District Court ["TR"].

Races used this route. [MH 50,67] Commander Krumm testified one purpose of searching the ORCA was to train his crew:

> ...if for nothing else, for the sake of keeping the crew trained since we seldom get a chance to do that on this type of vessel so we try to do as many different things as possible....[MH 37]

Commander Krumm did not claim probable cause or reasonable grounds to stop the ORCA.[/2] He stopped boats at random. He testified:

> At random times throughout all areas whenever we come across U.S. flagged vessels, if we feel the need we should

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/2 Commander Krumm knew of a "profile" for couriers which required (1) a large "mother ship" nearby; (2) boats riding abnormally low; (3) all hatches closed; (4) unusual wear or inadequate maintenance; (5) changeable or altered nameplates or documents. [MH 63,90]

However, the ORCA did NOT meet the profile. There was no mother ship, no inadequate maintenance, no hatches closed, and no changeable or altered nameplates or documents. The ORCA was riding "comfortably" and only "slightly low" consistent with extra supplies for a long journey. [MH 58,84]

Profile stops in airports are unconstitutional where the profile applies to many innocent travelers. Reid v. Georgia, 448 U.S. 438 (1980).

board for enforcement of those laws. [MH 21]

Commander Krumm randomly stopped 1% of all U.S. boats he sighted. [MH 48]

THE SEARCH OF THE ORCA'S PRIVATE AREAS

The ORCA was boarded by an armed party for "Coast Guard law enforcement", even though there was no indication of a violation. [MH 30] Marine regulations were not enforceable out of U.S. waters. [MH 793] The toilet did not have to comply with regulations in international waters. [MH 60,193] Even if the ORCA had violations, they could not have been cited. [MH 60]

Petitioners Humphrey, Garbez, and Smith were the only people on the ORCA. Lt. Rutz of the boarding party did not ask to see documentation. Boats the size of the ORCA need not be documented. Lt. Rutz did not ask for federal "certificates of inspection" or state safety certificates which small boats

must carry to show recent compliance with regulations.[3]

Instead, Lt. Rutz asked to inspect weapons, life jackets, and extinguishers below deck in the private cabin. Once below, Lt. Rutz asked to inspect the toilet in the private quarters. He never obtained consent to search. [MH 60,117]

Lt. Rutz went to inspect the toilet. He moved sails stored in the bathroom and saw opaque and sealed packages beneath the sails. [MH 119] The packages were sealed and odorless. [TR 65] Lt. Rutz saw under nylon tape "one seed and particles" and concluded it was marijuana. [MH 78] He opened the package and confirmed marijuana. Petitioners

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[3] This court in U.S. v. Villamonte-Marquez, supra, at 590, noted sailboats like the ORCA need not be documented. They must carry federal "certificates of inspection" and "state safety" certificates. Id. at 590. See 46 USC §§ 399, 400, 1470 and 1471.

were arrested. [MH 78,121] There was no odor of marijuana before the package was opened. [TR 65][4]

The search of the ORCA was without administrative warrant. The Coast Guard had Form 4100, a list of items to inspect. The 4100, however, does not state when to board or where to search and has not been approved by any court.

THE 9TH CIRCUIT OPINION

The 9th Circuit conceded the search of the ORCA was "suspicionless and discretionary ...". U.S. v. Humphrey, supra, at 745. The 9th Circuit permitted a search even though the Coast Guard failed to ask for, or inspect

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[4] Lt. Rutz testified there was no odor before opening the package, stating:

> Question: Now did you smell the odor of marijuana inside the boat at all?
>
> Answer: No I did not. [TR 65]

The only evidence that marijuana could be smelled came after Lt. Rutz opened the package.

documents or safety certificates for recent compliance so as to obviate the need for a search. The 9th Circuit permitted the search of the cabin and bathroom even though regulations did not apply to the high seas. Nor does the 9th Circuit explain how the search of the bathroom relates to "safety". Yet the 9th Circuit permits this search as a "safety and document inspection" stating:

> Once Lt. Rutz was legitimately below deck the defendants remaining expectation of privacy in the small cabin area was minimal. The additional intrusion upon the protected privacy interests by an inspection of the marine sanitation device was almost nil. Id. at 749.

The 9th Circuit permitted the search even though it held "the ORCA was boarded without probable cause or even reasonable suspicion that the ORCA was either carrying contraband or was in violation of safety or documentation regulations." Id. at 745.

V. REASONS FOR GRANTING THE WRIT

THIS ISSUE IN THIS CASE WAS LEFT UNRESOLVED IN VILLAMONTE-MARQUEZ AND IS CONFLICTING IN THE CIRCUITS

In U.S. v. Villamonte-Marquez, 462 U.S. 579 (1983), this court permitted a vessel stop in customs water without grounds for a limited documentation check. This court, however, was careful to limit the holding to: (1) stops in customs waters and (2) brief and on deck inspections of documents. The officials in Villamonte-Marquez did not go below deck or search private areas. Chief Justice Rehnquist was careful to state:

> While the need to make document checks is great, the resultant intrusion on 4th Amendment interests is quite limited. While it does intrude on one's abilities to make "free passage" ... it involves only a brief detention where officials come on board and visit public areas of the vessel and inspect documents ... neither the [vessel] nor its occupants are searched and visual inspection of the vessel is limited to what can be seen without a search .... Id. at 584.

The constitutionality of the stop of the ORCA and search of its below-cabin deck and bathroom was specifically unresolved in Villamonte-Marquez.

This issue left unresolved in Villamonte-Marquez is now creating conflict and chaos in the circuits. The 2d, 3d, and 4th Circuits all prohibit random or suspicionless stops on the high seas. The 2d Circuit holds that stops on the high seas are "investigative stops" which require "reasonable grounds" under the 4th Amendment./5 The 3d Circuit agrees that

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/5 The 2d Circuit has required reasonable grounds in U.S. v. Quemener, 789 F.2d 145, 154 (2d Cir. 1986) (Coast Guard boarding "investigatory stop" requiring reasonable suspicion); U.S. v. Pinto-Mejia, 720 F.2d 248, 262 (2d Cir. 1983) (probable cause or reasonable grounds required); U.S. v. Streifel, 665 F.2d 414, 419 (2d Cir. 1981) (reasonable grounds required on high seas).

reasonable grounds are required.[6] The 4th Circuit has upheld Coast Guard stops based on reasonable ground or a non-discretionary administrative plan with fixed checkpoints.[7]

On the other hand, the 1st Circuit allows brief stops limited to safety and document checks without grounds.[8] The 5th and 11th Circuits permit stops without grounds but limited to brief document checks

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[6] U.S. v. Wright-Barker, 784 F.2d 161, 176 (3d Cir. 1983) (reasonable grounds required for search by Coast Guard); U.S. v. Demanett, 629 F.2d 862 at 868 (3d Cir. 1980) (reasonable grounds present).

[7] U.S. v. Manbeck, 744 F.2d 161, 176 (4th Cir. 1984) (law unclear in 4th Circuit but reasonable grounds found); U.S. v. Watkins, 662 F.2d 1090 (4th Cir. 1981) (reasonable grounds); U.S. v. Harper, 617 F.2d 35, 38-39 (4th Cir. 1980) (non-discretionary administrative plan at checkpoints); but see U.S. v. Allen, 690 F.2d 409, 411 (4th Cir. 1982).

[8] U.S. v. Burke, 716 F.2d 935 (1st Cir. 1983); U.S. v. Hilton, 619 F.2d 127 (1st Cir. 1980). However, a full search requires probable cause. U.S. v. Hilton, supra, at 131.

in public areas. The 5th Circuit requires "reasonable grounds" for private areas./9 The 11th Circuit requires reasonable grounds or probable cause to search private areas./10

/9 The 5th Circuit limits stops without cause to document checks in public areas. U.S. v. Deweese, 632 F.2d 1267, 1271 (5th Cir. 1980); U.S. v. Williams, 617 F.2d 1063, 1087 (5th Cir. en banc 1980). These cases require reasonable grounds for 89(a) safety or document checks in private areas. The Fifth Circuit held:

> In light of the circumstances, we conclude that the 4th Amendment requires at least reasonable suspicion that contraband or evidence of criminal activity will be found before the Coast Guard may pursuant to §89(a) search any "private" area .... Id. at 1087.

/10 The 11th Circuit permits stops without grounds. U.S. v. Louis-Gonzalez, 719 F.2d 1539, 1549 (11th Cir. 1983); U.S. v. Thompson, 710 F.2d 1500, 1505 (11th Cir. 1983). The searches are, however, limited to below deck beam number inspections where documents do not establish identity.

Furthermore, in U.S. v. Lopez, 761 F.2d 632, 636 (11th Cir. 1985), the 11th Circuit held that any search beyond a brief document check would require reasonable grounds or probable cause. The 11th Circuit in two 1986 cases used "reasonable grounds" for stops of foreign vessels beyond customs waters. U.S. v. Reeh, 780 F.2d 1541 at 1547 (11th Cir. 1986)

(Footnote Continued)

The 9th Circuit in the instant case is at odds with other 9th Circuit cases which have required an administrative plan./11 There is also disagreement within the 5th Circuit. U.S. v. Williams, supra, en banc, established the law of the 5th Circuit. However, of 24 judges only 14 supported the majority opinion even though limited to

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(Footnote Continued)
and U.S. v. Pearson, 791 F.2d 867, 870 (11th Cir. 1986).

/11 In U.S. v. Piner, 608 F.2d 358 (9th Cir. 1979), the 9th Circuit required reasonable grounds or administrative plans holding "...random stops and boardings of vessel after dark for safety and registration inspection without cause..." violated the 4th Amendment absent reasonable grounds or administrative standards to insure that "...the decision to search is not left to the sole discretion of the Coast Guard...". In U.S. v. Watson, 678 F.2d 765 (9th Cir. 1982), a stop under an administrative plan was upheld only because it did not involve "discretion by the officer in the field". Id. at 773.

public areas and requiring reasonable grounds for private searches./12

The search of the ORCA goes well beyond most cases in the circuits by permitting below-deck searches into private areas. Even the 5th, and 11th Circuits limit vessel searches to brief documentation checks in non-private areas.

The chaos in the circuits is best summarized by the 4th Circuit in U.S. v. Manbeck, 744 F.2d 360 (4th Cir. 1984):

> Unfortunately the large number of cases and the distinctions upon which they

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/12 In U.S. v. Williams, supra, six judges concurred only because they felt the 4th Amendment did not protect foreign boats. Id. at 1091. These judges added that while there was no privacy interest in the hold of a large commercial vessel, reasonable grounds would be required to search small private vessels. Id. at 1093. Four judges in Williams concurred only because they found probable cause but disagreed with the majority's allowance of random stops. These judges agreed with the 9th Circuit cases of U.S. v. Piner, supra, and U.S. v. Watson, supra, and would require an administrative plan or reasonable grounds to insure stops are not arbitrary. Id. at 1097.

> rest have created a morass of precedent that has persistently defied attempts at clarification of this area of law. Id. at 382.

This court should review this conflict amongst the circuits to insure uniformity and to answer this important, yet, unresolved question.

THE STOP OF THE ORCA IN INTERNATIONAL WATERS AND SEARCH OF ITS PRIVATE CABIN AND BATHROOM VIOLATED THE FOURTH AMENDMENT

In U.S. v. Villamonte-Marquez, supra, this Court was careful to limit its holding to brief, on deck documentation checks, which did not require a search of the boat. The governmental interest in customs waters outweighed such a minimal intrusion given that less intrusive means such as a fixed checkpoint were impossible.

However, since certificates can show compliance with regulations, full searches should be prohibited absent probable cause or reasonable grounds. Both federal and state

laws make carrying safety certificates mandatory.[13] In Villamonte-Marquez, this Court noted inspection of documentation will satisfy the government's interest in safety, stating:

> Requests to check certificates of inspection play an obvious role in insuring safety on American waterways. While inspection of a vessel's documents might not always conclusively establish compliance with United States shipping laws, more often than not it will. Id. at 591.

The Coast Guard can inspect certificates without searching private areas. If the government is truly concerned with the

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[13] Villamonte-Marquez noted "...While pleasure vessels of this size are not required to be documented they are eligible for federal registration.... Many of these vessels must also submit to periodic inspections by the Coast Guard and a "certificate of inspection" must be kept on the vessel at all times ... under federal law each vessel with propulsion machinery must have a state-issued number displayed on a certificate of number that must be available for inspection at all times ... vessels not required to carry federal documentation papers may be required to carry a state issued safety certificate." Id. at 590.

environmental impact of marine toilets, they can require and inspect certificates of compliance. The Coast Guard made no efforts to minimize the intrusion on the ORCA by inspecting certificates to determine if the marine toilet had complied with health regulations./14

Villamonte-Marquez also relied on the governmental interest in customs waters. Customs waters share similar concerns with borders. The governmental interest is so great at the border that the 4th Amendment does not apply. The ORCA, however, unlike the facts in Villamonte-Marquez, was 2000

/14 The Harvard Law Review article Note, High on the Seas: Drug Smuggling, The 4th Amendment and Warrantless Searches at Sea, 93 Harv. L. Rev. 725, 741, agrees that a less intrusive alternative to random searches would be to require compliance certificates or stickers that can be carried at all times or posted on the boat to permit determination of safety compliance without boarding or searching private areas.

miles from the coast were less of a governmental interest exists.

Villamonte-Marquez also noted the interest of the government in safety on U.S. waters. However, the search of the ORCA's bathroom had no bearing on safety. Pollution regulations were not even enforceable on the high seas where the ORCA was stopped. Unlike the great concern in customs waters present in Villamonte-Marquez, the government's interest in searching the ORCA's toilet on the high seas was nil while the invasion into the ORCA's private quarters was great./15

/15 Justice Brennan in his dissent to Villamonte-Marquez, noted a boat involves a greater expectation of privacy than a car since "...a boat unlike a car often serves as an actual dwelling for its owners...". The below-deck area of the ORCA was the only dwelling and only area of privacy available to petitioners for thousands of miles. Since guests rarely drop in on the high seas, the expectation of privacy in the below-deck cabin and bathroom area of the ORCA was great.

This Court has consistently prohibited arbitrary governmental searches were a less intrusive method exists. U.S. v. Brignoni-Ponce, 442 U.S. 873 (1975); U.S. v. Martinez-Fuerte, 428 U.S. 543 (1976); Almeida-Sanchez v. U.S., 413 U.S. 266 (1973); U.S. v. Ortiz, 422 U.S. 899 (1975); Delaware v. Prouse, 440 U.S. 648 (1979).

In U.S. v. Brignoni-Ponce, supra, and U.S. v. Martinez-Fuerte, supra, a brief border stop for questioning was permitted without probable cause. However, a search of the entire vehicle was prohibited. For the roving patrol in Brignoni-Ponce, supra, reasonable grounds were required even for limited questioning. Only at the fixed checkpoints in U.S. v. Martinez-Fuerte were brief stops permitted without reasonable grounds. In Almeida-Sanchez, supra, and U.S. v. Ortiz, supra, probable cause was required if more than brief questioning occurred.

The government's interest in immigration is obviously more important than its interest in the toilet area of the ORCA. Yet, all of the above cases prohibit a search of private areas absent reasonable grounds or probable cause even at fixed checkpoints.

In Delaware v. Prouse, supra, this court prohibited random safety stops of vehicles in spite of the great interest in auto safety:

> The marginal contribution to roadway safety possibly resulting from a system of spot checks cannot justify subjecting every occupant of every vehicle on the road to a seizure -- limited in magnitude compared to other intrusions but nevertheless constitutionally cognizable -- at the unbridled discretion of law enforcement officials. To insist neither upon an appropriate factual basis for the suspicion directed at a particular automobile nor upon such other substantial and objection standard or rule, to govern the exercise of discretion, would invite intrusions upon constitutionally guaranteed rights based on nothing more substantial than inarticulate hunches. 440 U.S. at 661.

The governmental interest in highway safety is also far greater than the

government's interest in the ORCA's bathroom, yet, random stops are prohibited. The random search of the ORCA's cabin and bathroom conflicts with the above Supreme Court cases. Commentators agree that random searches on the high seas violate the 4th Amendment. Professor Lafave states:

> It is certainly not fanciful to suggest that the Prouse decision casts a rather heavy cloud over the 5th Circuit's ruling that Coast Guard inspections may be conducted purely at random. But Prouse only builds upon the Court's earlier decisions and, thus, it is not surprising that even before this ruling, some authority contrary to ... [the 5th Circuit] ... was to be found. 3 W. Lafave, Search and Seizure, 310.8(f) (1982 Supp.) at 39, n. 5.

The limits in Villamonte-Marquez to brief inspections of certificates, should apply to this case. The Coast Guard can insure safety by inspection of recent certificates without the need to conduct full

searches of private areas./16 By comparison to all of the above cases, the intrusion into the ORCA's private living quarters was great. On the other hand, by comparison to the extremely important governmental interest noted above, the governmental interest in the bathroom of the ORCA was nil. Based on the above cases, probable cause or reasonable grounds should be required for a full search of the ORCA's private cabin and bathroom.

ADMINISTRATIVE WARRANTS OR GUIDELINES ARE AT MINIMUM REQUIRED BY THE 4TH AMENDMENT

At a minimum, an administrative warrant or guidelines are required to insure searches are not left to the unfettered discretion of

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/16 See also Note, High on the Sea: Drug Smuggling, the 4th Amendment and Warrantless Searches at Sea. 93 Harv. L. Rev. 725 (1980), which concludes "...application of the 4th Amendment balancing principles of vessel safety searches strongly suggests that the current practice of completely discretionary searches is unconstitutional." Id. at 741.

officials./17

With the exception of heavily regulated industry, administrative warrants are required for administrative searches. Camera v. Municipal Court, 387 U.S. 523 (1967); Marshall v. Barlows, 436 U.S. 307 (1978); See v. City of Seattle, 387 U.S. 541 (1967). In Camera v. Municipal Court, supra, an administrative warrant was required to permit safety inspection of residences. The interest in fire regulation was far greater than the interest of searching the ORCA. Nevertheless, this court required an administrative plan to prohibit arbitrary

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/17 Unlike the stop and search of the ORCA, the stop in U.S. v. Villamonte-Marquez, supra, was not "random". A wake struck the vessel which then appeared in distress. Agents boarded because the vessel did not respond to radio inquiries as to their safety. The ORCA was not in distress and responded to the Coast Guard radio. Furthermore, Commander Krumm admitted that the stop was random.

searches. Similarly, in Marshall v. Barlows, supra, and See v. City of Seattle, supra, administrative searches of commercial premises required administrative warrants. This court in Camera, supra, stated:

> ...When the inspector demands entry the occupant has no way of knowing whether enforcement of the municipal code involved requires inspection of the premises, no way of knowing the lawful limits of the inspector's power to search and no way of knowing whether the inspector himself is acting under proper authorization. These are questions which may be reviewed by a neutral magistrate.... Camera v. Municipal Court, supra, at 532-533.

Support in the Circuit Courts ironically comes from other panels of the 9th Circuit which have, contrary to the holding in this case, required administrative warrants for random searches of vessels. In U.S. v. Piner, 608 F.2d 358 (9th Cir. 1979), a different panel of the 9th Circuit held:

> A stop and boarding after dark must be for cause requiring at least reasonable and articulable suspicion of noncompliance or must be conducted

> under administrative standards so drafted that the decision to search is not left to the sole discretion of the Coast Guard officer.

In U.S. v. Watson, 678 F.2d 765 (9th Cir. 1982) yet another panel of the 9th Circuit required an administrative plan, noting the search did not involve "discretion by an officer in the field, but instead was conducted pursuant to an administrative plan." Id. at 773. See also U.S. v. Harper, supra (4th Cir.).

Professor Lafave agrees that stops of vessels without an administrative plan violate the 4th Amendment:

> Whether ... [random boarding] can be squared with the Supreme Court's holding on similar issues is in serious doubt.... The court has declined to permit other warrantless random inspections for safety purposes whether directed at residential premises, Camera v. Municipal Court, 387 U.S. 523 ... business premises, Marshall v. Barlows, 436 U.S. 307 ... automobiles, Delaware v. Prouse, 440 U.S. 648 ... or documentation purposes to establish citizenship, U.S. v. Brignoni-Ponce, 442 U.S. 873 ... or the presence of

> driver's license and vehicle registration, Delaware v. Prouse, 440 U.S. 648 ... 3 W. Lafave, Search and Seizure, 310.8 (1982 Supp.). /18

Only heavily regulated industry may be inspected without an administrative warrant. Colonnade Catering Corp. v. U.S., 397 U.S. 72 (1970). While commercial fishing might be a "regulated industry", pleasure sailing is not "heavily regulated" or an "industry". Thus, an administrative plan should be required.

This court should grant review of this unresolved issue which conflicts in the circuits. Any result to the contrary "would invite intrusions upon constitutionally

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/18 The Harvard Law Review, Note, 93 L.Rev. 725, at 756 argues at minimum that an administrative warrant is required and argues that an administrative warrant would not be a mere "formality". An administrative warrant would limit discretion on (1) location of stops, (2) types of boats stopped, (3) areas which may be inspected and (4) the circumstances authorizing a stop. Prior review by a magistrate would prohibit overbreadth.

guaranteed rights based on nothing more substantial than inarticulate hunches". Delaware v. Prouse, supra, at 661.

VI CONCLUSION

Villamonte-Marquez left unresolved the question of whether the random stop of the ORCA 2000 miles from customs waters and search of its below-deck private cabin and bathroom violated the 4th Amendment, absent reasonable grounds, or an administrative plan.

The circuit courts are conflicting on this issue. This court should grant review to resolve this conflict between the circuits and resolve this important issue.

RESPECTFULLY SUBMITTED this 24th day of November, 1986, at Anchorage, Alaska.

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, vs. JOHN C. HUMPHREY, W. C. GARBEZ, and ROBERT D. SMITH, Defendants-Appellees.	FILED SEP 26 1986 Cathy A. Catterson Clerk US Court of Appeals Nos. 83-3023 83-3025 and 83-3026 ORDER

Before: CANBY, BOOCHEVER, and NORRIS, Circuit Judges.

The panel, as constituted above, has unanimously voted to deny the petition for rehearing and to reject the suggestion for a rehearing en banc.

The full court has been advised of the suggestion for an en banc rehearing and no judge of the court has requested a vote on the suggestion for rehearing en banc. Fed. R. App. P. 35(b).

The petition for rehearing is DENIED, and the suggestion for a rehearing en banc is REJECTED.

For Publication

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, vs. JOHN C. HUMPHREY, W. C. GARBEZ, and ROBERT D. SMITH, Defendants-Appellees.	FILED MAY 2 1985 PHILLIP B. WINBERRY Clerk US Court of Appeals Nos. 83-3023 83-3025 and 83-3026 ORDER

Appeal from the United States District Court
for the District of Alaska
Honorable James A. Von der Heydt,
Chief United States District Judge,
Presiding
Argued and Submitted August 17, 1983 -
Anchorage, Alaska

Before: CANBY, BOOCHEVER, and NORRIS,
Circuit Judges.
NORRIS, Circuit Judge:

This appeal presents the question whether Coast Guard officers violated the Fourth Amendment when they made a warrantless, suspicionless and discretionary

daytime boarding of a sailboat on the high seas, entered the below-deck cabin after learning that weapons were stowed there, and then conducted a safety inspection in the cabin.

I

On June 20, 1982, defendants Humphrey, Garbez and Smith were sailing in the north Pacific Ocean aboard the Orca, a thirty-nine foot sailboat./1 After the Coast Guard cutter Boutwell made visual contact with the Orca, the Boutwell received a radio message from the Orca. The Orca inquired whether a boarding would take place, and stated that the boarding party bring beer with them. The

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/1 At the time, the Orca's position was about 2000 miles from the Continental United States and over 700 miles from the closest landfall in the Aleutian Islands. Although designed for personal, not commercial, use, the Orca, like many pleasure craft, was capable of making transoceanic voyages.

Boutwell responded by radio, inquiring as to the destination of the Orca and informing the Orca that she would be boarded. The Orca reported that she was headed for her home port, San Francisco. The commander of the Boutwell decided to board the Orca for the stated purpose of conducting a routine document and safety inspection. The commander had been alerted to watch for pleasure craft carrying drugs from Asia via the North Pacific and observed that the Orca was riding slightly low in the water. The Orca was boarded without probable cause or even reasonable suspicion that the Orca was either carrying contraband or was in violation of safety or document regulations.

Upon boarding the Orca, Coast Guard Lt. Rutz asked whether any weapons were on board. When Humphrey answered affirmatively, Lt. Rutz asked, "May I see them?" Humphrey led Lt. Rutz below deck, where he took possession

of the weapons and unloaded them. Humphrey then invited Lt. Rutz to inspect the fire extinguishers, and after doing so, Lt. Rutz asked to examine the marine sanitation device, which is the bathroom facility in nautical terms. Humphrey told Lt. Rutz that he would have to move some loose sails in order to reach the device. Upon moving the sails, Lt. Rutz discovered some fifty aluminum foil packages with a few scattered seeds and green particles sticking to the outside of the packages. The officer opened the packages and discovered what he believed and a subsequent test proved to be marijuana. At that point, the defendants were arrested. A further search of the Orca led to the discovery of approximately 3100 pounds of marijuana valued at over $3,000,000.

Defendants were indicted under 21 U.S.C. §955(a) (1982) for possessing narcotics on a vessel of American registry with the intent

to distribute and for conspiracy to do so under 21 U.S.C. §955(c) (1982). After the district court denied their motion to suppress the marijuana evidence on the ground that the search of the Orca violated the Fourth Amendment, they were convicted on both the substantive and conspiracy counts following a court trial. All three defendants were convicted on both counts; defendant Smith received thirty months incarceration, defendant Garbez was sentenced to two years, and defendant Humphrey was sentenced to four years.

II

A

The first question we address is whether the Coast Guard's daytime boarding of the Orca for the purpose of conducting a document and safety inspection -- as distinguished from the subsequent inspection of the below-deck cabin -- violated the Fourth

Amendment. We hold, principally on the authority of United States v. Villamonte-Marquez, 462 U.S. 579 (1983), that the boarding did not violate the Constitution, notwithstanding that the boarding was conducted without a warrant, without probable cause and without an administrative plan limiting the discretion of the Coast Guard officers.

In Villamonte-Marquez, the Supreme Court considered a suspicionless and warrantless boarding of a sailboat located in a ship channel connecting a designated customs port of entry with the open sea. The boarding was conducted by customs officials for the purpose of a document inspection. Because a single boarding -- limited to the publicly exposed deck area -- involves only a minimal intrusion on protected Fourth Amendment interests, the Court said such boardings are to be "judged by balancing [the] intrusion on

the individual's Fourth Amendment interests against [the] promotion of legitimate governmental interests." Id. at 588 (quoting Delaware v. Prouse, 440 U.S. 648, 654 (1979)).[/2]

[/2] The role of the balancing test in Fourth Amendment jurisprudence is a much mooted subject -- one that has generated considerable controversy among courts and commentators and some inconsistencies in the reasoning of the opinions of the Supreme Court. See Texas v. Brown, 440 U.S. 730, 745 (1983) (Powell, J., concurring). The limited role of the balancing test was recently acknowledged in United States v. Place, 103 S.Ct. 2637 (1983), in which the Court invalidated evidence obtained as a result of a 90 minute detention of luggage at an airport. Justice O'Connor, writing for the Court, emphasized the importance of the distinction between minimal and substantial intrusion on the individual's Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion. When the nature and extent of the detention are minimally intrusive of the individual's Fourth Amendment interests, the opposing law enforcement interests can support a seizure based on less than probable cause." Id. at 2642. Thus, Place sets the standard for application of the balancing test; a minimal intrusion on protected privacy interests is measured by the balancing test, but a substantial intrusion, like the intrusion in Place, must satisfy the probable cause requirement of the Fourth Amendment.

Thus, Villamonte-Marquez establishes the balancing test as the standard by which the boarding of the Orca must be judged. When we apply the balancing test to the facts of this case, we reach the same result as did the Supreme Court in Villamonte-Marquez./3 Initially, the privacy interest invaded by the boarding of the Orca is not materially different from the privacy interest evaluated in Villamonte-Marquez; both cases involved law enforcement officers entering the publicaly exposed deck area of a sailing vessel. The governmental interests in the

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/3 Villamonte-Marquez does not directly control the outcome in this case, because its holding was limited to approval of a suspicionless boarding of a vessel in a ship canal connecting a customs port of entry with the high seas. The governmental interest in enforcing the customs laws -- the interest that was decisive in Villamonte-Marquez -- does not support a search on the high seas, where nothing like the functional equivalent of the border is involved. Cf. Almeida-Sanchez v. United States, 413 U.S. 266, 272-73 (1973).

two cases are factually distinguishable, but in both cases the governmental interest is sufficiently substantial to outweigh the minimal intrusion on protected privacy. Two important governmental interests supported the boarding of the Orca. First, there is a substantial governmental interest in enforcing documentation laws on the high seas because the United States is obligated by treaty to enforce documentation laws for United States vessels in international waters. See United States v. Watson, 678 F.2d 765, 768 (9th Cir.), cert. denied, 459 U.S. 1038 (1982). Second, the governmental interest in safety was particularly strong in this case because of the course and location of the Orca in the North Pacific. The Magistrate's finding that the commander of the Boutwell decided to board the Orca to determine whether she was capable of making the journey home is supported by the

testimony of the commander of the Boutwell that he would have been remiss in his duty to insure the safety of the United States citizens at sea if he had not made a safety inspection of the Orca under the circumstances.[4] More generally, an unsafe vessel is not only a hazard to its occupants, but can pose dangers to international commerce by sea. See United States v. Hilton, 619 F.2d 127, 131-32 (1st Cir.), cert. denied, 449 U.S. 887 (1980).

When we compare the minimal intrusion on protected interests with the strong

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[4] Indeed, the Magistrate found that the safety hazard presented by the location and course of the Orca constituted "cause" for the boarding. "Cause" for a safety and document inspection would normally be established by factors providing reason to believe a violation of safety or document regulations existed. We do not address the question whether hazard created by location could constitute cause in this case, because of our conclusion that the balance of interests reconciled the boarding with the Fourth Amendment, even in the absence of probable cause.

governmental interest that supported the boarding of the Orca, we conclude, as the Supreme Court did in Villamonte-Marquez, that the boarding itself was "reasonable" and hence did not violate the Fourth Amendment. Our conclusion is highly fact specific. We do not establish a general rule that approves all warrantless, suspicionless, and discretionary boardings of noncommercial vessels on the high seas. Rather, we hold that a daytime boarding for the purpose of conducting a safety inspection that is conducted in a minimally intrusive manner, when the vessel is in a location that poses a substantial risk to its occupants, is reasonable under the Fourth Amendment balancing test. No broader conclusion is required to decide this case.

Our conclusion is consistent with this court's precedent. Before Villamonte-Marquez, it would have been an

open question whether the boarding of the Orca violated the Fourth Amendment. Our court had approved a brief detention in territorial waters when there was cause in the form of a visible safety hazard, United States v. Odneal, 565 F.2d 598 (9th Cir. 1977), cert. denied, 435 U.S. 952 (1978), but we disapproved a warrantless and suspicionless boarding at night, reasoning that a nighttime boarding constituted a substantial subjective intrusion on privacy interests protected by the Fourth Amendment. United States v. Piner, 608 F.2d 358 (9th Cir. 1979). In two subsequent cases, however, United States v. Watson, 678 F.2d 765, United States v. Eagon, 707 F.2d 362 (9th Cir. 1982), cert. denied, 104 S.Ct. 483 (1983), we approved suspicionless nighttime boardings pursuant to an administrative plan that limited the discretion of the Coast Guard officers. Thus, the constitutionality

of the boarding of the Orca, which was conducted during the day but without an administrative plan, was not clearly settled by our cases.

Our holding today -- that under some circumstances the Coast Guard may conduct warrantless and suspicionless boardings for the purpose of conducting document and safety inspections on the high seas -- is supported by the decision of our sister circuits. The First,[/5] Fifth,[/6] and Eleventh[/7] Circuits

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/5 See United States v. Burke, 716 F.2d 935, 937 (1st cir. 1983); United States v. Dillon, 701 F.2d 6 (1st Cir. 1983); United States v. Arra, 630 F.2d 836, 842 (1st Cir. 1980); United States v. Hilton, 619 F.2d at 131; United States v. Zurosky, 614 F.2d 779, 788 & n.10 (1st Cir. 1979), cert. denied, 446 U.S. 967 (1980).

/6 See United States v. DeWeese, 632 F.2d 1267, 1269 (5th Cir. 1980), cert. denied 454 U.S. 878 (1981); United States v. Williams, 617 F.2d 1063, 1077 (5th Cir. 1980) (en banc); United States v. Erwin, 602 F.2d 1183, 1184 (5th Cir. 1979) (per curiam), cert. denied,

(Footnote Continued)

have all held that warrantless and suspicionless boardings for the purpose of conducting document and safety inspections do not violate the Fourth Amendment even in the absence of administrative plan. Although the Second,[/8] Third[/9] and Fourth[/10] Circuits have

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(Footnote Continued)
44 U.S. 10 (1980); United States v. Warren, 578 F.2d 1058, 1064-65 (5th Cir. 1978), cert. denied, 446 U.S. 956 (1980); United States v. One (1) 43 Foot Sailing Vessel, 538 F.2d 694 (5th Cir. 1976) (per curiam).

/7 See United States v. Luis-Gonzalez, 719 F.2d 1539, 1549 (11thCir. 1983); United States v. Thompson, 710 F.2d 1500, 1505 (11th Cir. 1983), cert. denied, 104 S.Ct. 730 (1984).

/8 United States v. Streifel, 665 F.2d 414, 422 (2d Cir. 1981); see also id. at 419 & n.8 (adopting requirement of "reasonable suspicion, based on articulable, objective facts" for boardings on the high seas); United States v. Pinto-Majia, 720 F.2d 248, 262 (2d Cir. 1983) (following Striefel), modified, 728 F.2d 142 (1984).

/9 United States v. Demanett, 629 F.2d 862, 867 (3d Cir. 1980) (limiting authorization of boardings without cause to document inspections of commercial
(Footnote Continued)

required an administrative plan or reasonable suspicion in the cases in which boardings of noncommercial vessels have been approved, most of these cases fail to differentiate document and safety inspections from other boardings, and none of the cases requiring cause or an administrative plan for safety and document inspections was decided with the benefit of the Supreme Court's decision in Villamonte-Marquez.

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vessels), cert. denied, 450 U.S. 910 (1981).

/10 In United States v. Harper, 617 F.2d 35 (4th Cir.), cert. denied, 449 U.S. 887 (1980), the reasoning of the Fourth Circuit suggested that an administrative plan might be necessary to validate a boarding under §89(a), even of a commercial vessel. Id. at 38-39. This decision was not discussed int he later opinion in United States v. Allen, 690 F.2d 409 (th Cir. 1982), which also appears to have involved a commercial vessel, but contains language to the effect that a commercial vessel, but contains language to the effect that a §89(a) inspection "does not require probable cause nor reasonable suspicion and is not in itself a violation of the Fourth Amendment." Id. at 411.

B

Our decision that the boarding itself did not violate the Fourth Amendment does not extend to the search of the below-deck living quarters. Thus, we now turn to the question whether the below-deck inspection of the marine sanitation device, which led to the discovery of the contraband, was constitutionally permissible. We answer this question in two steps. Initially, we consider whether Lt. Rutz legitimately gained access to the below-deck cabin. Then, we inquire into the legitimacy of his continuation of the safety inspection after he went below deck.

First, we hold that Lt. Rutz's entry into the below-deck cabin was lawful. Once Humphrey voluntarily told Lt. Rutz that there were firearms below deck, securing those weapons to insure the safety of the boarding party provided a legitimate reason to go

below deck. The limited, protective "search" for and temporary "seizure" of the guns was justified by security considerations. Cf. Terry v. Ohio, 392 U.S. 1, 24 (1968) (approving limited search "to determine whether the person is in fact carrying a weapon and to neutralize the threat of physical harm" incident to an investigative stop).

Second, we conclude that Lt. Rutz's below-deck continuation of the safety and document inspection by attempting to examine the marine sanitation device, after he had legitimately gained access to the cabin, did not violate the Fourth Amendment./11 Once

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/11 The appellants' brief relied almost exclusively on the claim that the initial boarding of the Orca violated the Fourth Amendment because of the basence of an administrative plan. After appellants' opening brief was filed, the Supreme Court handed down its decision in Villamonte-Marquez, undermining this (Footnote Continued)

Lt. Rutz was legitimately below deck, the defendants' remaining expectation of privacy in the small cabin area was minimal./12 The additional intrusion upon protected privacy interests generated by an inspection of the marine sanitation device was almost nil./13 We conclude that the inspection of the marine sanitation device was reasonable under the circumstances. There was almost no invasion

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(Footnote Continued)
contention. At oral argument,t he appellants pressed the contention that the intrusion into the below-deck area violated the Constitution.

/12 Katz v. United States, 389 U.S. 347 (1967), teaches us to protect those subjective expectations of privacy which society is prepared to recognize as reasonable as legitimate. Id. at 361 (Harlon J., concurring); see also Bakas v. Illinois, 439 U.S. 128, 143 & N.12 (1978). The subjective expectation of privacy in the below-deck cabin was minimal once outsiders were legitimately present there.

/13 We note that the search did not extend to private lockers or other private areas not within the cabin in which Lt. Rutz was legitimately present.

of protected Fourth Amendment privacy to weight against the governmental interest in conducting a routine safety and document inspection.

Finally, we note the narrow basis of our holding that the warrantless and suspicionless below-deck safety inspection did not violate the Fourth Amendment. Lt. Rutz had independent cause to go below deck in order to secure the weapons and insure the safety of the boarding party. Thus, we have not decided whether a routine safety and document inspection may intrude into the privacy of below-deck living quarters absent such cause. Indeed, the question whether a document and safety inspection may extend below deck without a warrant and probable cause has been explicitly reserved by the Supreme Court, United States v. Villamonte-Marquez, 462 U.S. at 584 n.3 (1983), and this court. United States v.

Watson, 678 F.2d at 773 n. 9. Moreover, this case does not require us to reach the question whether, absent the necessity to go below deck to insure the safety of the boarding party, a warrant would be required for a search of below-deck living quarters./14

/14 In Watson, we held that a warrant was not required for an on-deck safety and document inspection, but we did not consider the applicability of the Warrant Clause to a below deck search. 678 F.2d at 773-74. There is some dispute on the applicability of the Warrant Clause to marine searches. Compare United States v. Arra, 630 F.2d at 842 ("The mobility and numerosity of vessels, and the vastness of the sea, make it impossible to oprovide for issuance of administrative warrants, in advance, on a vessel-by-vessel vasis. And the alternative, issuance of some kind of open-ended process prior to a cutter's departure on patrol ... would seem to be largely a formalistic exercise." (citations omitted)); with Note, High on the Seas; Drug Smuggling, The Fourth Amendment, and Warrantless Searches at Sea, 93 Harv. L. Rev. 725, 729 (1980) ("Since the [exigent circumstances] doctrine is primarily based on the impossibility of securing a warrant, warrantless searches should be allowed only in situations where the facts demonstrate that a warrant could not have been obtained in advance and that delaying the search

(Footnote Continued)

C

In the course of his inspection of the marine sanitation device, Lt. Rutz moved some sails and observed opaque aluminum foil packages.[15] The magistrate found that Lt. Rutz could see seeds and bits of green particles visible underneath the cellophane tape on one or more of the packages that looked to him like marijuana, giving Lt. Rutz probable cause to seize the packages. We approve this determination. The seeds and green particles were in "plain view". The requirements for invoking the plain view doctrine were articulated in United States v.

(Footnote Continued)
would have created a likelihood that the vessel would flee or evidence would otherwise be lost.").

[15] The question whether the requirements of the "plain view" doctrine have been met is a mixed question of law and fact that we review de novo. See United States v. Babb, 752 F.2d 1320, 1324 (9th Cir. 1984).

Chesher, 678 F.2d 1353 (9th Cir. 1982); first, the officer must be legitimately present; second, the discovery must be inadvertent; and third, it must be immediately apparent that it is evidence that is seen. Id. at 1356. Here, we have already found the first prong of the test is satisfied. Lt. Rutz was legitimately attempting to inspect the marine sanitation device. We also conclude that the second requirement of the plain view doctrine is met: the discovery was inadvertent. Lt. Rutz was filling out a standard Coast Guard form that required inspection of the marine sanitation device. Humphrey told Lt. Rutz that the sails had to be moved. The packages were discovered underneath the sails. Under these circumstances, it would be difficult to argue that the discovery of the foil packets was anything but inadvertent.

Appellants argue that the third requirement for application of the plain view doctrine -- that it be immediately apparent to the officer that evidence was present -- is not satisfied. We conclude, however, that upon observing the packages, Lt. Rutz acquired a reasonable belief that it was contraband he was seizing. This conclusion is supported by the magistrate's finding that Lt. Rutz saw seeds and green particles on the outside of the packages and inferred that the packages contained contraband.

Humphrey now argues that the presence of seeds and green herbal material is consistent with his statement to Lt. Rutz that the packages contained dried fruit, and therefore that it was not immediately apparent to Lt. Rutz that the packages constituted evidence. But "under the plain view doctrine ... the incriminating nature of an object is generally deemed 'immediately apparent' where

police have probable cause to believe it is evidence of crime." Chesher, 678 F.2d at 1357 (quoting United States v. Ochs, 595 F.2d 1247, 1258 (2d Cir. 1979); see also Texas v. Brown, 460 U.S. 730, 741-42 (1983). Here, the green herbal material and seeds gave Lt. Rutz probable cause to believe that the packages contained an illicit substance. Therefore, we conclude that he legitimately seized the foil packages.

We need not address the question whether a warrant would be required under some circumstances to open and search the aluminum foil packages. In this case, the remote area in which the vessel was found and the impossibility of obtaining a search warrant within a practical period of time created an exigent circumstance eliminating the necessity for a warrant. See Watson, 678 F.2d at 773-74.

In sum, neither the boarding of the Orca, nor the inspection of the marine sanitation device, nor the opening of the foil packages violated the Fourth Amendment. We thus reject appellants' arguments that the marijuana evidence should have been suppressed.

III

Finally, we address appellants' contention that there was insufficient evidence to support their convictions. All three defendants were convicted of conspiracy in violation of 21 U.S.C. §955c and possession of marijuana on the high seas in violation of 21 U.S.C. §955a(a). We consider the evidence in the light most favorable to the government. See Glasser v. United States, 315 U.S. 60 (1941). We will first review the sufficiency of the evidence against Garbez and Smith and then review the evidence against Humphrey.

A

The primary evidence against Garbez and Smith is the undisputed fact that they were crew members of the Orca, a single cabin vessel ladened with 642 packages of marijuana that weighed 3,100 pounds. This is not a case where the contraband was located in a closed hold where even a large bulk of contraband would not necessarily be known to members of the crew. See United States v. Willis, 639 F.2d 1335, 1338-39 (5th Cir. 1981). The marijuana was stored throughout the cabin and was four and one-half to five feet deep in the cabin and was four and one-half to five feet deep in the area of the marine sanitation device. There was testimony that the cabin reeked with the odor of marijuana. Where a large quantity of contraband pervades the only cabin of a vessel returning from a long voyage, it is reasonable to infer that the occupants were

engaged in more than mere knowing presence. See, United States v. Williams, 630 F.2d 1322, 1328 (9th Cir.), cert. denied, 449 U.S. 865 (1980). Smith and Garbez were not mere passengers; they spent every day and night aboard the Orca for a considerable period of time. In this case, as in United States v. Escobar, 674 F.2d 469, 478 (5th Cir. 1982), the sheer bulk of the contraband cargo supports the inference that crew members possessed contraband with the intent to distribute it and participated in a conspiracy to do so. As we concluded in United States v. Allen, 675 F.2d 1373 (9th Cir. 1980), cert. denied 454 U.S. 833 (1981), given the scale and the undertaking and the necessity for secrecy, "no one would have been admitted to the enterprise who was not to be trusted completely with knowledge of its criminal character." Id. at 1384.

Moreover, Humphrey made numerous statements incriminating Garbez and Smith. There was testimony that he stated, "We've thrown our charts away and you'll never know where we've been," and "We thought about sinking the Orca, but there was a chance the Coast Guard wouldn't spot us in the water ..." Viewed in the light most favorable to the government, such statements support an inference of a concerted plan of action including all three defendants. In addition, Garbez made incriminating statements that he needed the $20,000 he was paid for the voyage and that he did not know the identity of the persons with whom Humphrey dealt. A photograph found on the Orca showed Garbez on top of a bunk laden with packages containing marijuana. Smith made no incriminating statements, but given all of the evidence, the magistrate's conclusion that he possessed

and conspired to possess the marijuana is supported by sufficient evidence.

B

Humphrey does not challenge the sufficiency of the evidence to support his possession conviction; he only challenges the sufficiency of the evidence to support his conspiracy conviction on the theory that if the evidence does not support the convictions of Smith and Garbez, he cannot be convicted of conspiring with himself. We have already rejected the contention that there was insufficient evidence to support the convictions of Smith and Garbez; therefore, we must reject the derivative claim by Humphrey. Not only was Humphrey the caption of a vessel containing a large quantity of contraband, but he also made a number of incriminating admissions.

We conclude that more than sufficient evidence supported the substantive conspiracy convictions of all three defendants.

AFFIRMED.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

AT ANCHORAGE

UNITED STATES OF AMERICA, PLAINTIFF, V. ROBERT D. SMITH, W. C. GARBEZ, JOHN HUMPHREY, DEFENDANTS.	FILED JAN 4 1983 U S DISTRICT COURT DISTRICT OF ALASKA NO. 182-76 CR

EXCERPTS OF ORAL ORDER OF THE DISTRICT COURT OF NOVEMBER 02, 1982

THE COURT: So we may then begin the trial with the understanding that the motion to suppress has been denied with the right of the defendants to file their objections within five days and the government to respond in three. [Excerpts of Trial, TR. 11-12.]